

BETSY C. MANIFOLD (SBN 182450)  
RACHELE R. BYRD (SBN 190634)  
MARISA C. LIVESAY (SBN 223247)  
BRITTANY N. DEJONG (SBN 258766)  
**WOLF HALDENSTEIN ADLER**  
**FREEMAN & HERZ LLP**  
750 B Street, Suite 1820  
San Diego, CA 92101  
Telephone: (619) 239-4599  
Facsimile: (619) 234-4599  
manifold@whafh.com  
byrd@whafh.com  
livesay@whafh.com  
dejong@whafh.com

*Attorneys for Plaintiff*

[Additional Counsel on Signature Page]

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SHIVA STEIN,

Plaintiff,

v.

XILINX, INC., DENNIS SEGERS, VICTOR  
PENG, RAMAN CHITKARA, SAAR  
GILLAI, RONALD S. JANKOV, MARY  
LOUISE (ML) KRAKAUER, THOMAS H.  
LEE, JON A. OLSON, ELIZABETH  
VANDERSLICE,

Defendants.

) Case No.

) **COMPLAINT FOR VIOLATIONS OF**  
) **SECTIONS 14(a) AND 20(a) OF THE**  
) **SECURITIES EXCHANGE ACT OF**  
) **1934**

) **DEMAND FOR JURY TRIAL**

1 Plaintiff Shiva Stein (“Plaintiff”), by her attorneys, makes the following allegations against  
2 Xilinx, Inc. (“Xilinx” or the “Company”) and the members of the board of directors of Xilinx (the  
3 “Board” or “Individual Defendants,” along with Xilinx, collectively referred to as the “Defendants”),  
4 for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the  
5 “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), SEC Rule 14a-9, 17 C.F.R. 240.14a-9, and Regulation  
6 G, 17 C.F.R. § 244.100 in connection with the proposed acquisition (the “Proposed Transaction”) of  
7 Xilinx by affiliates of Advanced Micro Devices, Inc. (“AMD”). The allegations in this complaint are  
8 based on the personal knowledge of Plaintiff as to herself and on information and belief (including  
9 the investigation of counsel and review of publicly available information) as to all other matters stated  
10 herein.

### 11 **INTRODUCTION**

12 1. This is an action brought by Plaintiff to enjoin a transaction whereby Thrones Merger  
13 Sub, Inc., a Delaware corporation and direct wholly owned subsidiary of AMD (“Merger Sub”) will  
14 merge with and into Xilinx, with Xilinx continuing as the surviving corporation as a direct wholly  
15 owned subsidiary of AMD (“Proposed Transaction”). Pursuant to the Merger Agreement, Xilinx  
16 shareholders will receive 1.7234 shares of AMD common stock for each share of Xilinx common  
17 stock owned (the “Merger Consideration”). The Board has unanimously recommended to the  
18 Company’s stockholders that they vote for the Proposed Transaction at the special meeting of the  
19 Xilinx shareholders. Xilinx shareholders will own approximately 26% of the post-transaction entity,  
20 and AMD shareholders will own 74% of the post-transaction entity.

21 2. To convince Xilinx stockholders to vote in favor of the Proposed Transaction, on  
22 December 4, 2020, the Board authorized the filing of a materially incomplete and misleading  
23 Registration Statement on Form S-4 (the “Registration Statement”) with the Securities and Exchange  
24 Commission (“SEC”). The Registration Statement violates Sections 14(a) and 20(a) of the Exchange  
25 Act by noncompliance with Regulation G and SEC Rule 14a-9 (17 C.F.R. § 244.100 and 17 C.F.R.  
26 § 240.14a-9, respectively).

27 3. Defendants have failed to disclose certain material information necessary for Xilinx  
28 stockholders to properly assess the fairness of the Proposed Transaction, thereby violating SEC rules

1 and regulations and rendering certain statements in the Registration Statement materially incomplete  
2 and misleading.

3 4. In particular, the Registration Statement contains materially incomplete and misleading  
4 information concerning the financial forecasts for the Company prepared and relied upon by the  
5 Board in recommending to the Company's stockholders that they vote in favor of the Proposed  
6 Transaction. The same forecasts were used by Xilinx's financial advisor, Credit Suisse Securities  
7 (USA) LLC ("Credit Suisse"), in conducting its valuation analyses in support of its fairness opinion.  
8 The Registration Statement also contains materially incomplete and misleading information  
9 concerning certain financial analyses performed by the financial advisor.

10 5. The material information that has been omitted from the Registration Statement must be  
11 disclosed prior to the forthcoming stockholder vote in order to allow the stockholders to make an  
12 informed decision regarding the Proposed Transaction.

13 6. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against  
14 Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act, based on Defendants'  
15 violations of Regulation G and Rule 14a-9. Plaintiff seeks to enjoin Defendants from holding the  
16 stockholders vote on the Proposed Transaction and taking any steps to consummate the Proposed  
17 Transaction unless, and until, all material information discussed below is disclosed to Xilinx  
18 stockholders sufficiently in advance of the vote on the Proposed Transaction or, in the event the  
19 Proposed Transaction is consummated without corrective disclosures, to recover damages resulting  
20 from Defendants' violations of the Exchange Act.

21 **JURISDICTION AND VENUE**

22 7. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act  
23 (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations  
24 of Section 14(a) and 20(a) of the Exchange Act.

25 8. This Court has personal jurisdiction over each defendant named herein because each  
26 defendant is either a corporation that does sufficient business in California or an individual who has  
27 sufficient minimum contacts with California to render the exercise of jurisdiction by the California  
28 courts permissible under traditional notions of fair play and substantial justice.



## **SUBSTANTIVE ALLEGATIONS**

### ***The Proposed Transaction***

On October 27, 2020, Xilinx and AMD jointly announced that it had entered into the Agreement and Plan of Merger (the “Merger Agreement”):

SILICON VALLEY, Calif., Oct. 27, 2020 (GLOBE NEWSWIRE) -- AMD (NASDAQ: AMD) and Xilinx (NASDAQ: XLNX) today announced they have entered into a definitive agreement for AMD to acquire Xilinx in an all-stock transaction valued at \$35 billion. The combination will create the industry’s leading high performance computing company, significantly expanding the breadth of AMD’s product portfolio and customer set across diverse growth markets where Xilinx is an established leader. The transaction is expected to be immediately accretive to AMD margins, EPS and free cash flow generation and deliver industry-leading growth.

The acquisition brings together two industry leaders with complementary product portfolios and customers. AMD will offer the industry’s strongest portfolio of high performance processor technologies, combining CPUs, GPUs, FPGAs, Adaptive SoCs and deep software expertise to enable leadership computing platforms for cloud, edge and end devices. Together, the combined company will capitalize on opportunities spanning some of the industry’s most important growth segments from the data center to gaming, PCs, communications, automotive, industrial, aerospace and defense.

“Our acquisition of Xilinx marks the next leg in our journey to establish AMD as the industry’s high performance computing leader and partner of choice for the largest and most important technology companies in the world,” AMD President and CEO Dr. Lisa Su said. “This is truly a compelling combination that will create significant value for all stakeholders, including AMD and Xilinx shareholders who will benefit from the future growth and upside potential of the combined company. The Xilinx team is one of the strongest in the industry and we are thrilled to welcome them to the AMD family. By combining our world-class engineering teams and deep domain expertise, we will create an industry leader with the vision, talent and scale to define the future of high performance computing.”

“We are excited to join the AMD family. Our shared cultures of innovation, excellence and collaboration make this an ideal combination. Together, we will lead the new era of high performance and adaptive computing,” said Victor Peng, Xilinx president and CEO. “Our leading FPGAs, Adaptive SoCs, accelerator and SmartNIC solutions enable innovation from the cloud, to the edge and end devices. We empower our customers to deploy differentiated platforms to market faster, and with optimal efficiency and performance. Joining together with AMD will help accelerate growth in our data center business and enable us to pursue a broader customer base

across more markets.”

With a combined team of 13,000 talented engineers and over \$2.7 billion of annual R&D investment, AMD will have additional talent and scale to deliver an even stronger set of products and domain-specific solutions.

#### **Additional Transaction Details**

Under the terms of the agreement, Xilinx stockholders will receive a fixed exchange ratio of 1.7234 shares of AMD common stock for each share of Xilinx common stock they hold at the closing of the transaction. Based on the exchange ratio, this represents approximately \$143 per share of Xilinx common stock<sup>2</sup>. Post-closing, current AMD stockholders will own approximately 74 percent of the combined company on a fully diluted basis, while Xilinx stockholders will own approximately 26 percent. The transaction is intended to qualify as a tax-free reorganization for U.S. federal income tax purposes.

AMD expects to achieve operational efficiencies of approximately \$300 million within 18 months of closing the transaction, primarily based on synergies in costs of goods sold, shared infrastructure and through streamlining common areas.

The transaction has been unanimously approved by the AMD and Xilinx Boards of Directors. The acquisition is subject to approval by AMD and Xilinx shareholders, certain regulatory approvals and other customary closing conditions. The transaction is currently expected to close by the end of calendar year 2021. Until close, the parties remain separate, independent companies.

#### **Management and Board of Directors**

Dr. Lisa Su will lead the combined company as CEO. Xilinx President and CEO, Victor Peng, will join AMD as president responsible for the Xilinx business and strategic growth initiatives, effective upon closing of the transaction. In addition, at least two Xilinx directors will join the AMD Board of Directors upon closing.

#### **Advisors**

Credit Suisse and DBO Partners are acting as financial advisors to AMD and Latham & Watkins LLP is serving as its legal advisor. Morgan Stanley is acting as lead financial advisor to Xilinx. BofA Securities is also acting as a financial advisor and Skadden, Arps, Slate, Meagher & Flom LLP is serving as legal counsel.

#### ***The Materially Misleading and Incomplete Solicitation Statement***

21. On December 7, 2020, Defendants caused the Registration Statement to be filed with the SEC in connection with the Proposed Transaction. The Registration Statement solicits the Company’s shareholders to vote in favor of the Proposed Transaction. Defendants were obligated to carefully review the Registration Statement before it was filed with the SEC and disseminated to the

1 Company's shareholders to ensure that it did not contain any material misrepresentations or  
2 omissions. However, the Registration Statement misrepresents and/or omits material information that  
3 is necessary for the Company's shareholders to make an informed decision concerning whether to  
4 vote in favor of the Proposed Transaction, in violation of Sections 14(a) and 20(a) of the Exchange  
5 Act.

6 ***Financial Forecasts***

7 22. The Registration Statement discloses tables for forecasts for both Xilinx and AMD.  
8 However, the Registration Statement fails to provide material information concerning these  
9 Projections, which were developed by the Company's management and relied upon by the Board in  
10 recommending that the shareholders vote in favor of the Proposed Transaction. These financial  
11 forecasts were also relied upon by the Company's financial advisor in rendering its fairness opinion.

12 23. With respect to the AMD Projections, the Registration Statement fails to provide: (i)  
13 the value of certain line items used to calculate (a) Adjusted EBITDA, (b) Adjusted EPS, and (c)  
14 Unlevered Free Cash Flow, all of which are non-GAAP measures; (ii) a reconciliation to its most  
15 comparable GAAP measures, in direct violation of Regulation G and, consequently, Section 14(a).

16 24. With respect to the AMD Adjusted Xilinx Projections, the Registration Statement  
17 fails to provide: (i) the value of certain line items used to calculate (a) Adjusted EBITDA unburdened  
18 by SBC; (b) Adjusted EBITDA burdened by SBC; (c) Adjusted EPS unburdened by SBC; (d)  
19 Adjusted EPS burdened by SBC; and (e) Unlevered Free Cash Flow; (ii) a reconciliation to its most  
20 comparable GAAP measures, in direct violation of Regulation G and, consequently, Section 14(a);  
21 and (iii) stock-based compensation.

22 25. With respect to the Xilinx Projections, the Registration Statement fails to provide: (i)  
23 the value of certain line items used to calculate (a) Adjusted EBITDA (b) Adjusted earnings per  
24 share, and (c) Unlevered Free Cash Flow, all of which are non-GAAP measures; and (ii) a  
25 reconciliation to its most comparable GAAP measures, in direct violation of Regulation G and  
26 consequently Section 14(a).

27 26. The SEC has indicated that if the most directly comparable GAAP measure is not  
28 accessible on a forward-looking basis, the company must disclose that fact, provide any reconciling



information that is available without unreasonable effort, identify any unavailable information and disclose the probable significance of that information. A company is permitted to provide the projected non-GAAP measure, omit the quantitative reconciliation and qualitatively explain the types of gains, losses, revenues or expenses that would need to be added to or subtracted from the non-GAAP measure to arrive at the most directly comparable GAAP measure, without attempting to quantify all those items.

27. When a company discloses non-GAAP financial measures in a registration statement that were relied on by a board of directors to recommend that shareholders exercise their corporate suffrage rights in a particular manner, the company must, pursuant to SEC regulatory mandates, also disclose all forecasts and information necessary to make the non-GAAP measures not misleading, and must provide a reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100.

28. Indeed, the SEC has increased its scrutiny of the use of non-GAAP financial measures in communications with shareholders. Former SEC Chairwoman Mary Jo White has stated that the frequent use by publicly traded companies of unique company-specific, non-GAAP financial measures (as Xilinx included in the Registration Statement here), implicates the centerpiece of the SEC's disclosures regime:

In too many cases, the non-GAAP information, which is meant to supplement the GAAP information, has become the key message to investors, crowding out and effectively supplanting the GAAP presentation. Jim Schnurr, our Chief Accountant, Mark Kronforst, our Chief Accountant in the Division of Corporation Finance and I, along with other members of the staff, have spoken out frequently about our concerns to raise the awareness of boards, management and investors. And last month, the staff issued guidance addressing a number of troublesome practices *which can make non-GAAP disclosures misleading*: the lack of equal or greater prominence for GAAP measures; exclusion of normal, recurring cash operating expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and the use of cash per share data. I strongly urge companies to carefully consider this guidance and revisit their approach to non-GAAP disclosures. I also urge again, as I did last December, that appropriate controls be considered and that audit committees carefully oversee their company's use of non-GAAP measures and disclosures.<sup>1</sup>

<sup>1</sup> Mary Jo White, *Keynote Address, International Corporate Governance Network Annual*



29. The SEC has repeatedly emphasized that disclosure of non-GAAP forecasts can be inherently misleading and has therefore heightened its scrutiny of the use of such forecasts.<sup>2</sup> Indeed, the SEC's Division of Corporation Finance released a new and updated Compliance and Disclosure Interpretation ("C&DI") on the use of non-GAAP financial measures to clarify the extremely narrow and limited circumstances, known as the business combination exemption, where Regulation G would not apply.<sup>3</sup>

30. More importantly, the C&DI clarifies when the business combination exemption does not apply:

There is an exemption from Regulation G and Item 10(e) of Regulation S-K for non-GAAP financial measures disclosed in communications subject to Securities Act Rule 425 and Exchange Act Rules 14a-12 and 14d-2(b)(2); it is also intended to apply to communications subject to Exchange Act Rule 14d-9(a)(2). This exemption does not extend beyond such communications. Consequently, if the same non-GAAP financial measure that was included in a communication filed under one of those rules is also disclosed in a Securities Act registration statement, proxy statement, or tender offer statement, this exemption from Regulation G and Item 10(e) of Regulation S-K would not be available for that non-GAAP financial measure.

*Id.*

31. Thus, the C&DI makes clear that the so-called "business combination" exemption from the Regulation G non-GAAP to GAAP reconciliation requirement applies solely to the extent that a third-party, such as a financial advisor, has utilized projected non-GAAP financial measures to render a report or opinion to the Board. To the extent the Board also examined and relied on internal financial forecasts to recommend a transaction, Regulation G applies.

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*Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (June 27, 2016), <https://www.sec.gov/news/speech/chair-white-icgn-speech.html> (last visited Aug. 18, 2020) (emphasis added).

<sup>2</sup> See, e.g., Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC's Evolving Views*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (June 24, 2016), <https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/> (last visited Mar. 7, 2019); Gretchen Morgenson, *Fantasy Math Is Helping Companies Spin Losses Into Profits*, N.Y. TIMES, Apr. 22, 2016, [http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?\\_r=0](http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0) (last visited Aug. 18, 2020).

<sup>3</sup> *Non-GAAP Financial Measures*, U.S. SECURITIES AND EXCHANGE COMMISSION (Apr. 4, 2018), <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm#101> (last visited Aug. 18, 2020). To be sure, there are other situations where Regulation G would not apply but are not applicable here.

32. Thus, to bring the Registration Statement into compliance with Regulation G as well as cure the materially misleading nature of the forecasts under SEC Rule 14a-9 as a result of the omitted information, Defendants must provide a reconciliation table of the non-GAAP measures to the most comparable GAAP measures.

### ***Financial Analyses***

33. With respect to Credit Suisse's *Discounted Cash Flow Analysis Regarding Xilinx*, and *Discounted Cash Flow Analysis Regarding Xilinx Including Synergies Estimates*, the Registration Statement fails to disclose: (i) all line items used to calculate unlevered free cash flows; (ii) the underlying inputs used to derive the discount rate of 7.5% to 9.5%; (iii) the terminal values for Xilinx; (iv) the basis for applying a range of terminal value multiples from 17.0x to 22.0x to the Xilinx NTM Adjusted EBITDA; (v) the number of fully diluted outstanding shares of Xilinx common stock; and (vi) stock-based compensation.

34. With respect to Credit Suisse' *Discounted Cash Flow Analysis Regarding AMD*, the Registration Statement fails to disclose: (i) all line items used to calculate unlevered free cash flows; (ii) the underlying inputs used to derive the discount rate of 8.5% to 10.5%; (iii) the terminal values for AMD; (iv) the basis for applying EBITDA trading multiples ranging from 22.0x to 27.0x; (v) the number of fully diluted outstanding shares of AMD common stock; and (vi) stock-based compensation.

35. In sum, the Registration Statement independently violates both: (i) Regulation G, which requires a presentation and reconciliation of any non-GAAP financial measure to their most directly comparable GAAP equivalent; and (ii) Rule 14a-9, since the material omitted information renders certain statements, discussed above, materially incomplete and misleading. As the Registration Statement independently contravenes the SEC rules and regulations, Defendants violated Section 14(a) and Section 20(a) of the Exchange Act by filing the Registration Statement to garner votes in support of the Proposed Transaction from Xilinx shareholders.

36. Absent disclosure of the foregoing material information prior to the special shareholder meeting to vote on the Proposed Transaction, Plaintiff will not be able to make a fully informed decision regarding whether to vote in favor of the Proposed Transaction, and she is thus

1 threatened with irreparable harm, warranting the injunctive relief sought herein.

2  
3 **FIRST CAUSE OF ACTION**

4 **(Against All Defendants for Violations of Section 14(a) of the Exchange Act**  
5 **and 17 C.F.R. § 244.100 Promulgated Thereunder)**

6 37. Plaintiff repeats and re-alleges each allegation set forth above as if fully set forth  
7 herein.

8 38. Section 14(a)(1) of the Exchange Act makes it “unlawful for any person, by the use of  
9 the mails or by any means or instrumentality of interstate commerce or of any facility of a national  
10 securities exchange or otherwise, in contravention of such rules and regulations as the Commission  
11 may prescribe as necessary or appropriate in the public interest or for the protection of investors, to  
12 solicit or to permit the use of his name to solicit any proxy statement or consent or authorization in  
13 respect of any security (other than an exempted security) registered pursuant to section 78l of this  
14 title.” 15 U.S.C. § 78n(a)(1).

15 39. As set forth above, the Registration Statement omits information required by SEC  
16 Regulation G, 17 C.F.R. § 244.100, which independently violates Section 14(a). SEC Regulation G,  
17 among other things, requires an issuer that chooses to disclose a non-GAAP measure to provide a  
18 presentation of the “most directly comparable” GAAP measure, and a reconciliation “by schedule or  
19 other clearly understandable method” of the non-GAAP measure to the “most directly comparable”  
20 GAAP measure. 17 C.F.R. § 244.100(a).

21 40. The failure to reconcile the numerous non-GAAP financial measures included in the  
22 Registration Statement violates Regulation G and constitutes a violation of Section 14(a).

23 **SECOND CAUSE OF ACTION**

24 **(Against All Defendants for Violations of Section 14(a) of the Exchange Act**  
25 **and Rule 14a-9 Promulgated Thereunder)**

26 41. Plaintiff repeats and re-alleges each allegation set forth above as if fully set forth  
27 herein.

28 42. SEC Rule 14a-9 prohibits the solicitation of shareholder votes in registration  
statements that contain “any statement which, at the time and in the light of the circumstances under  
which it is made, is false or misleading with respect to any material fact, or which omits to state any

1 material fact necessary in order to make the statements therein not false or misleading . . . .” 17  
2 C.F.R. § 240.14a-9.

3 43. Regulation G similarly prohibits the solicitation of shareholder votes by “mak[ing]  
4 public a non-GAAP financial measure that, taken together with the information accompanying that  
5 measure . . . contains an untrue statement of a material fact or omits to state a material fact necessary  
6 in order to make the presentation of the non-GAAP financial measure . . . not misleading.” 17 C.F.R.  
7 § 244.100(b).

8 44. Defendants have issued the Registration Statement with the intention of soliciting  
9 shareholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized  
10 the dissemination of the Registration Statement, which fails to provide critical information regarding,  
11 amongst other things, the financial forecasts for the Company.

12 45. In so doing, Defendants made untrue statements of fact and/or omitted material facts  
13 necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue  
14 of their roles as officers and/or directors, were aware of the omitted information but failed to disclose  
15 such information, in violation of Section 14(a). The Individual Defendants were therefore negligent,  
16 as they had reasonable grounds to believe material facts existed that were misstated or omitted from  
17 the Registration Statement, but nonetheless failed to obtain and disclose such information to  
18 shareholders although they could have done so without extraordinary effort.

19 46. The Individual Defendants knew or were negligent in not knowing that the  
20 Registration Statement is materially misleading and omits material facts that are necessary to render it  
21 not misleading. The Individual Defendants undoubtedly reviewed and relied upon the omitted  
22 information identified above in connection with their decision to approve and recommend the  
23 Proposed Transaction.

24 47. The Individual Defendants knew or were negligent in not knowing that the material  
25 information identified above has been omitted from the Registration Statement, rendering the sections  
26 of the Registration Statement identified above to be materially incomplete and misleading.

27 48. The Individual Defendants were, at the very least, negligent in preparing and  
28 reviewing the Registration Statement. The preparation of a registration statement by corporate

1 insiders containing materially false or misleading statements or omitting a material fact constitutes  
 2 negligence. The Individual Defendants were negligent in choosing to omit material information from  
 3 the Registration Statement or failing to notice the material omissions in the Registration Statement  
 4 upon reviewing it, which they were required to do carefully as the Company's directors. Indeed, the  
 5 Individual Defendants were intricately involved in the process leading up to the signing of the Merger  
 6 Agreement and the preparation of the Company's financial forecasts.

7 49. Xilinx is also deemed negligent as a result of the Individual Defendants' negligence  
 8 in preparing and reviewing the Registration Statement.

9 50. The misrepresentations and omissions in the Registration Statement are material to  
 10 Plaintiff, who will be deprived of her right to cast an informed vote if such misrepresentations and  
 11 omissions are not corrected prior to the vote on the Proposed Transaction.

12 51. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's  
 13 equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that  
 14 Defendants' actions threaten to inflict.

15 **THIRD CAUSE OF ACTION**  
 16 **(Against the Individual Defendants for**  
**Violations of Section 20(a) of the Exchange Act)**

17 52. Plaintiff incorporates each and every allegation set forth above as if fully set forth  
 18 herein.

19 53. The Individual Defendants acted as controlling persons of Xilinx within the meaning  
 20 of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or  
 21 directors of Xilinx, and participation in and/or awareness of the Company's operations and/or  
 22 intimate knowledge of the incomplete and misleading statements contained in the Registration  
 23 Statement filed with the SEC, they had the power to influence and control and did influence and  
 24 control, directly or indirectly, the decision making of the Company, including the content and  
 25 dissemination of the various statements that Plaintiff contends are materially incomplete and  
 26 misleading.

27 54. Each of the Individual Defendants was provided with or had unlimited access to  
 28 copies of the Registration Statement and other statements alleged by Plaintiff to be misleading prior

1 to and/or shortly after these statements were issued and had the ability to prevent the issuance of the  
2 statements or cause the statements to be corrected.

3 55. In particular, each of the Individual Defendants had direct and supervisory  
4 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the  
5 power to control or influence the particular transactions giving rise to the Exchange Act violations  
6 alleged herein, and exercised the same. The Registration Statement at issue contains the unanimous  
7 recommendation of each of the Individual Defendants to approve the Proposed Transaction. They  
8 were thus directly involved in preparing the Registration Statement.

9 56. In addition, as the Registration Statement sets forth at length, and as described herein,  
10 the Individual Defendants were involved in negotiating, reviewing, and approving the Merger  
11 Agreement. The Registration Statement purports to describe the various issues and information that  
12 the Individual Defendants reviewed and considered. The Individual Defendants participated in  
13 drafting and/or gave their input on the content of those descriptions.

14 57. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of  
15 the Exchange Act.

16 58. As set forth above, the Individual Defendants had the ability to exercise control over  
17 and did control a person or persons who have each violated Section 14(a) and Rule 14a-9 by their acts  
18 and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants  
19 are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of  
20 Individual Defendants' conduct, Plaintiff will be irreparably harmed.

21 59. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's  
22 equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that  
23 Defendants' actions threaten to inflict.

### 24 **RELIEF REQUESTED**

25 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

26 A. Preliminarily and permanently enjoining Defendants and their counsel, agents,  
27 employees and all persons acting under, in concert with, or for them, from proceeding with,  
28 consummating, or closing the Proposed Transaction, unless and until the Company discloses the

1 material information discussed above which has been omitted from the Registration Statement;

2 B. In the event that the proposed transaction is consummated, rescinding it and setting it  
3 aside, or awarding rescissory damages;

4 C. Awarding compensatory damages against Defendants, individually and severally, in  
5 an amount to be determined at trial, together with pre-judgment and post-judgment interest at the  
6 maximum rate allowable by law, arising from the Proposed Transaction;

7 D. Awarding Plaintiff the costs and disbursements of this action and reasonable  
8 allowances for fees and expenses of Plaintiff's counsel and experts; and

9 E. Granting Plaintiff such other and further relief as the Court may deem just and  
10 proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial by jury.

13 DATED: December 7, 2020

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

14 By: /s/ Rachele R. Byrd  
15 RACHELE R. BYRD

16 BETSY C. MANIFOLD  
17 RACHELE R. BYRD  
18 MARISA C. LIVESAY  
19 BRITTANY N. DEJONG  
20 750 B Street, Suite 1820  
21 San Diego, CA 92101  
22 Telephone: (619) 239-4599  
23 Facsimile: (619) 234-4599  
24 manifold@whafh.com  
25 byrd@whafh.com  
26 livesay@whafh.com  
27 dejong@whafh.com

28 **Of Counsel:**

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**  
GLORIA KUI MELWANI  
270 Madison Avenue  
New York, NY 10016  
Telephone: (212) 545-4600  
Facsimile: (212) 686-0114

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***Counsel for Plaintiff***